

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN TRANSMISSION COMPANY OF)	
ILLINOIS)	
)	Docket No. 14-0380
Petition for an Order Pursuant to Section 8-509 of)	
the Public Utilities Act Authorizing Use of Eminent)	
Domain Power.)	

**AMEREN TRANSMISSION COMPANY OF ILLINOIS' MOTION TO STRIKE
BRIEF ON EXCEPTIONS, AND EXCEPTIONS, OF IPAVA INTERVENORS**

I. INTRODUCTION

On June 18, 2014, putative intervenors the Ipava Intervenors filed a brief and exceptions to the Administrative Law Judge's Proposed Order that ask the Commission to issue an order based on documents never admitted into the evidentiary record nor subjected to the adversary process. The Commission, however, must base its findings on the evidence of record alone. Accordingly, the Proposed Order cannot be revised as the Ipava Intervenors advocate. For this reason, and as explained more fully below, the Commission should strike the Ipava Intervenors' Brief on Exceptions and Exceptions from the record of this proceeding, or otherwise disregard this misplaced filing.

II. ARGUMENT

Due process in administrative proceedings requires the opportunity to be heard and the right to test adverse evidence. *See, e.g., Gigger v. Bd. of Fire & Police Comm'rs of City of East St. Louis*, 23 Ill. App. 2d 433, 439 (4th Dist. 1959); *Abrahamson v. Ill. Dep't of Prof'l Reg.*, 153 Ill. 2d 76, 95 (1992); *Balmoral Racing Club, Inc. v. Ill. Racing Bd.*, 151 Ill. 2d 367, 400-01 (1992). Consistent with this principle, the Commission can base its decisions only on the record evidence. 220 ILCS 5/10-103; 220 ILCS 5/10-201(e)(iv); 5 ILCS 100/10-35(c). This ensures

that the Commission's findings are grounded in facts that—consistent with due process—have been admitted into evidence and subjected to the adversarial process. *See, e.g., Ill. Comm. Comm'n v. Ill. Gas Co.*, Docket 02-0170, Order, 2003 Ill. PUC LEXIS 682, *35-36 (Aug. 6, 2003) (no consideration given to expert qualifications submitted for the first time in reply brief on exceptions); *Commonwealth Edison Co.*, Docket 92-0121, Order, 1995 Ill. PUC LEXIS 232, *25-26 (Apr. 12, 1995) (no consideration given to proposal offered after evidentiary hearing concluded).

The Ipava Intervenors ignore this elementary tenet of due process. The evidentiary hearing in this proceeding was on June 9, 2014. Nine days later, the Ipava Intervenors petitioned to intervene in the case. At the same time, they filed a brief and exceptions that ask the Commission to render its final decision based on three appraisal documents attached to their June 18 petition to intervene. They also ask the Commission to consider a fourth alleged appraisal document that “likely” exists as they represent it, based on the say-so of their counsel and one of their members. (Ipava Int. BOE at 1-2 (filed June 18, 2014).)

But none of these appraisal documents are in the evidentiary record. Therefore, none have been subjected to the adversarial process that due process guarantees, and none can suffice as a lawful basis for the Commission's decision in this case. ATXI has had no opportunity to test the veracity of the documents or of the Ipava Intervenors' allegations. And rather than tested record evidence, the Ipava Intervenors ask that the Proposed Order be revised based on the mere assertions of their counsel. Arguments of counsel in brief, however, are not evidence. *Johnson v. Lynch*, 66 Ill. 2d 242, 246 (1977). As such, the Commission cannot entertain the revisions proposed in the Ipava Intervenors' brief and exceptions, and it should strike that misplaced filing from the record of this proceeding.

The Commission also can strike, or at the least disregard, the Ipava Intervenor's brief and exceptions because the filing disregards, inexplicably, the Commission's rule that requires an intervenor to accept the record of a proceeding as it stands at the time of his intervention. 83 Ill. Adm. Code 200.200(e). The Ipava Intervenor is not willing to accept the record of this case as it stood on June 18—the day that they sought intervention. Their request that the Commission render a final decision based on documents attached to their petition, but not entered into evidence, makes this plain; the Ipava Intervenor wants to add to the record, not accept it.

III. CONCLUSION

In their Brief on Exceptions and Exceptions, the putative Ipava Intervenor has asked the Commission to do something it simply cannot: render a final decision based on documents not included in the evidentiary record nor subjected to the adversarial process. And in requesting this of the Commission, these putative intervenors have ignored its rules. Accordingly, the Commission should strike their misplaced brief and exceptions from the record or otherwise disregard that filing.

Dated: June 18, 2014

Respectfully submitted,

AMEREN TRANSMISSION COMPANY OF
ILLINOIS

By: /s/ Albert D. Sturtevant
One of its Attorneys

Edward C. Fitzhenry
Eric E. Dearmont
Ameren Services Company
One Ameren Plaza
1901 Chouteau Avenue
St. Louis, Missouri 63166
Telephone: (314) 554-4673
Facsimile: (314) 554-4014
efitzhenry@ameren.com
edearmont@ameren.com

Albert D Sturtevant
Rebecca L. Segal
WHITT STURTEVANT LLP
180 N LaSalle Street, Suite 2001
Chicago, Illinois 60601
(312) 251-3017
(312) 251-3019
sturtevant@whitt-sturtevant.com
segal@whitt-sturtevant.com

CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, an attorney, certify that on June 18, 2014, I caused a copy of the foregoing *Ameren Transmission Company of Illinois' Motion to Strike Brief on Exceptions, and Exceptions, of Ipava Intervenors* to be served by electronic mail to the individuals on the Commission's Service List for Docket 14-0380.

/s/ Albert D. Sturtevant
Attorney for Ameren Transmission Company of Illinois